

## REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 23, 24, 26, 29, 30, 41-44, and 46-50 will be pending in the present application. Claims 6-22, 27, 28, 31-33, and 35, 36, and 38-40 have been cancelled by this amendment, and claims 1-5, 25, 34, 37, and 45 were cancelled in a prior amendment.

Please note that in canceling the claims from the present application, the applicant does not acquiesce with the Examiner's conclusions as to the patentability of the cancelled claims. On the contrary, the applicant reserves the right to pursue the cancelled claims, or claims of similar, scope via a Continuation application.

Applicant notes with appreciation the Examiner's indication that claims 23, 24, 26, 29, 30, 34, 41, 42, 46, and 50 are allowed.

### *I. Rejection of Claim 43 under 35 U.S.C. § 102*

Claim 43 stands rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,890,490 to Aylsworth et al. ("the '490 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 43, as amended, recites a pressure support system that includes a housing, a pressure generating system disposed within the housing, and a controller in the housing that controls the operation of the pressure generating system. Claim 43 further recites that a transceiver is coupled to the controller to allow an information storage device to communicate wirelessly with the controller. According to claim 43, the controller communicates with a hand-held information storage device via the transceiver when that information storage device is disposed proximate to the transceiver, and not in direct contact with the pressure support system. The controller also ceases communicating with the hand-held information storage device when that storage device is moved a predetermined distance from the transceiver

so that it is no longer proximate to the transceiver. Applicant respectfully submits that the '490 patent does not teach or suggest a pressure support system having these features.

The '490 patent teaches a gas flow monitoring system that provides data to the device via an electronic means. Examples of such electronic means include a modem and radio frequency transmission. However, nothing in the '490 patent teaches or suggests that a communication link be established between the controller in a pressure support system and a hand-held information storage device and that the communication link be intentionally enabled and disabled based on the proximity of that device relative to the transceiver.

For the reasons presented above, applicant respectfully submits that independent claim 43 is not anticipated or rendered obvious by the cited references. Accordingly, applicant respectfully requests that the above rejection of claim 43 be withdrawn.

*II. Rejection of Claims 6-19, 21, 22, 27, 31-33, 36, 39, 40, 44, and 47-49 Under 35 U.S.C. § 103*

Claims 6-19, 21, 22, 27, 31-33, 36, 39, 40, 44, and 47-49 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,560,353 to Willemot et al. ("the '353 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

**A. Independent Claim 44**

Independent claim 44 recites a method of configuring a pressure support system that includes inserting an information storage device into a slot defined in the exterior of the pressure support system and communicating first information from the information storage device to the medical device responsive to the information storage device being disposed in the slot. The pressure support system is then configured based on the first information.

Claim 44 specifies that the first information includes 1) *operating mode* information designating an operating mode of the pressure support device and 2) *operating parameter* information designating an operating parameter of the pressure support device. The operating mode of the pressure support system is configured to correspond to the operating mode designated by the operating mode information. At least one operating parameter of the pressure support system is configured to correspond to the operating parameter designated by the

operating mode information. Applicant respectfully submits that the '353 patent does not teach or suggest a pressure support system having these features.

The phrase "operating mode" in claim 44 refers to the type of pressure support treatment provided to the patient by the pressure support device, e.g., CPAP, bi-level, auto-titration, PPAP, PAV, or a combination thereof. See page 6, lines 6-8, of the present application. The phrase "operating parameter" refers to the variables that can be altered or controlled in each operating mode. See page 7, lines 1-5, of the present application. For example, in a CPAP device, the CPAP level is considered an operating parameter. In a bi-level device, the IPAP and EPAP levels are operating parameters.

The '353 patent teaches controlling the dosage time, the number of puffs, and the dosage date for the medication from a nebulizer. At best, this information corresponds to the "operating parameters" of the nebulizer. However, the '353 patent does not teach or suggest that the information used on the card be used to alter the operating *mode* of the nebulizer, i.e., to cause the hardware used for nebulization to be used in a different way to administer a different type of treatment to the user.

On page 4, beginning at line 11, the Examiner indicates that the '353 patent teaches that the card can be used to control a CPAP device. From this, the Examiner concludes that the card could control the operating mode and operating parameters to properly control both the CPAP device and the nebulizer device, presumably with the same card. Applicant submits that this logic fails to explain why one card would contain both operating mode and operating parameter information.

For example, using the Examiner's suggested situation where one card can be used to control both a CPAP and a nebulizer, it stands to reason that this one card would include information needed to set the CPAP pressure and information to control the puff sequence of the nebulizer. Both types of information are "operating parameter" information. Nothing in the '353 patent suggests that the card include information that would cause the CPAP to operate in another mode, such as a bi-level device, or that would cause the nebulizer to operate in another mode. The Examiner's suggestion - that if one card can be used to control two different types of devices, that

card must contain “operating mode” information - misinterprets the meaning of the phrase “operating mode”, which means that one device can be programmed to operate to provide different pressure support therapies.

Applicant further notes that even if one card is capable of controlling both a CPAP and a nebulizer, for example, nothing in the ‘353 patent, or any of the other references, teaches or suggests that this card include special operating mode information to control both devices properly. For example, both devices could read all of the information on the card and only “remove” or “read” information that is indicated or tagged as pertaining to that device. Thus, even under the Examiner’s suggested method of using the card taught by the ‘353 patent, there is no suggestion as to why both operating mode and operating parameter are needed.

#### B. Independent Claim 48

Independent claim 48 recites an information storage device adapted for use with a medical device. The information storage device includes an identification storage area, a first information storage area that contains operating information for use in controlling an operation of the medical device, and one or more of the following:

- (1) a first control data storage area adapted to contain information that controls whether the operating information can be read from the information storage device,
- (2) a second control data storage area adapted to contain information that controls whether the operating information can be erased from the information storage device, and
- (3) a display data storage area adapted to contain information to be displayed on such a medical device. Applicant respectfully submits that the ‘353 patent does not teach or suggest a pressure support system having these features.

The ‘353 patent teaches providing operating parameter information to the nebulizer and storing information about the usage of the nebulizer the patient. However, this patent does not teach or suggest that the information contained on card C controls whether data can be read or erased from the card. Nor does the ‘353 patent teach or suggest that the information contained on the card be displayed by the nebulizer.

The Examiner has not explained in the August 13, 2003 Office Action where or how these features of the present invention are taught or suggested by the cited references, including the '353 patent. If the Examiner should continue to maintain the rejection of claim 48 based on the '353 patent, applicant respectfully requests that the Examiner identify the specific teachings in the patent that anticipate or render obvious these features of claim 48.

For the reasons presented above, applicant respectfully submits that independent claims 44 and 48 are not rendered obvious by the cited references. In addition, claims 47 and 49 are also not rendered obvious due to their dependency from independent claims 44 and 48, respectively. Claims 6-19, 21, 22, 27, 31-33, 36, 39, and 40 have been cancelled rendering their rejection moot. Accordingly, applicant respectfully requests that the above rejection of claim 6-19, 21, 22, 27, 31-33, 36, 39, 40, 44, and 47-49 be withdrawn.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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